

AMENDED IN ASSEMBLY MAY 19, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2765**

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**Introduced by Assembly Member Weber**  
**(Principal coauthor: Assembly Member Bonta)**  
**(Principal coauthor: Senator Mitchell)**

February 19, 2016

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An act to amend Section 1170.18 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, as amended, Weber. Proposition 47: sentence reduction.

Existing law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, reduced the penalties for various crimes. Under the provisions of the act, a person currently convicted of a felony or felonies who would have been guilty of a misdemeanor under the act if the act had been in effect at the time of the conviction may petition or apply to have the sentence reduced in accordance with the act. That act requires that this petition or application be filed before November 4, 2017. 2017, or at a later date upon a showing of good cause.

Proposition 47 ~~provides that~~ *authorizes* its provisions ~~may~~ to be amended by a statute that is consistent with and furthers its intent and that is passed by a  $\frac{2}{3}$  vote of each house of the Legislature and is signed by the Governor. Proposition 47 also provides that the Legislature may, by majority vote, amend, add, or repeal provisions to further reduce the penalties for offenses it addresses.

~~Because the~~

*This bill would remove the time limitation for petitioning or applying instead authorize a person to petition or apply for a reduction of sentence, sentence before November 4, 2022, or at a later date upon a showing of good cause. Because the bill would extend the period of time in which a person could file a petition or application without a showing of good cause, the bill would amend the act and would require a  $\frac{2}{3}$  vote of the Legislature.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1170.18 of the Penal Code is amended  
2 to read:  
3 1170.18. (a) A person ~~currently~~ who, on November 5, 2014,  
4 was serving a sentence for a conviction, whether by trial or plea,  
5 of a felony or felonies who would have been guilty of a  
6 misdemeanor under the act that added this section (“this act”) had  
7 this act been in effect at the time of the offense may petition for a  
8 recall of sentence before the trial court that entered the judgment  
9 of conviction in his or her case to request resentencing in  
10 accordance with Sections 11350, 11357, or 11377 of the Health  
11 and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666  
12 of the Penal Code, as those sections have been amended or added  
13 by this act.  
14 (b) Upon receiving a petition under subdivision (a), the court  
15 shall determine whether the petitioner satisfies the criteria in  
16 subdivision (a). If the petitioner satisfies the criteria in subdivision  
17 (a), the petitioner’s felony sentence shall be recalled and the  
18 petitioner resentenced to a misdemeanor pursuant to Sections  
19 11350, 11357, or 11377 of the Health and Safety Code, or Section  
20 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those  
21 sections have been amended or added by this act, unless the court,  
22 in its discretion, determines that resentencing the petitioner would  
23 pose an unreasonable risk of danger to public safety. In exercising  
24 its discretion, the court may consider all of the following:  
25 (1) The petitioner’s criminal conviction history, including the  
26 type of crimes committed, the extent of injury to victims, the length  
27 of prior prison commitments, and the remoteness of the crimes.

1 (2) The petitioner's disciplinary record and record of  
2 rehabilitation while incarcerated.

3 (3) Any other evidence the court, within its discretion,  
4 determines to be relevant in deciding whether a new sentence  
5 would result in an unreasonable risk of danger to public safety.

6 (c) As used throughout this Code, "unreasonable risk of danger  
7 to public safety" means an unreasonable risk that the petitioner  
8 will commit a new violent felony within the meaning of clause  
9 (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of  
10 Section 667.

11 (d) A person who is resentenced pursuant to subdivision (b)  
12 shall be given credit for time served and shall be subject to parole  
13 for one year following completion of his or her sentence, unless  
14 the court, in its discretion, as part of its resentencing order, releases  
15 the person from parole. Such person is subject to Section 3000.08  
16 parole supervision by the Department of Corrections and  
17 Rehabilitation and the jurisdiction of the court in the county in  
18 which the parolee is released or resides, or in which an alleged  
19 violation of supervision has occurred, for the purpose of hearing  
20 petitions to revoke parole and impose a term of custody.

21 (e) Under no circumstances may resentencing under this section  
22 result in the imposition of a term longer than the original sentence.

23 (f) A person who has completed his or her sentence for a  
24 conviction, whether by trial or plea, of a felony or felonies who  
25 would have been guilty of a misdemeanor under this act had this  
26 act been in effect at the time of the offense, may file an application  
27 before the trial court that entered the judgment of conviction in  
28 his or her case to have the felony conviction or convictions  
29 designated as misdemeanors.

30 (g) If the application satisfies the criteria in subdivision (f), the  
31 court shall designate the felony offense or offenses as a  
32 misdemeanor.

33 (h) Unless requested by the applicant, no hearing is necessary  
34 to grant or deny an application filed under subsection (f).

35 (i) The provisions of this section shall not apply to persons who  
36 have one or more prior convictions for an offense specified in  
37 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e)  
38 of Section 667 or for an offense requiring registration pursuant to  
39 subdivision (c) of Section 290.

1     (j) Any petition or application under this section shall be filed  
2     on or before November 4, 2022, or at a later date upon showing  
3     of good cause.

4     ~~(j)~~

5     (k) Any felony conviction that is recalled and resentenced under  
6     subdivision (b) or designated as a misdemeanor under subdivision  
7     (g) shall be considered a misdemeanor for all purposes, except that  
8     such resentencing shall not permit that person to own, possess, or  
9     have in his or her custody or control any firearm or prevent his or  
10    her conviction under Chapter 2 (commencing with Section 29800)  
11    of Division 9 of Title 4 of Part 6.

12    ~~(k)~~

13    (l) If the court that originally sentenced the petitioner is not  
14    available, the presiding judge shall designate another judge to rule  
15    on the petition or application.

16    ~~(l)~~

17    (m) Nothing in this section is intended to diminish or abrogate  
18    any rights or remedies otherwise available to the petitioner or  
19    applicant.

20    ~~(m)~~

21    (n) Nothing in this and related sections is intended to diminish  
22    or abrogate the finality of judgments in any case not falling within  
23    the purview of this act.

24    ~~(n)~~

25    (o) A resentencing hearing ordered under this act shall constitute  
26    a “post-conviction release proceeding” under paragraph (7) of  
27    subdivision (b) of Section 28 of Article I of the California  
28    Constitution (Marsy’s Law).